

NO. 21,075

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

. UNTALAN, as administrator)
Estate of TRINIDAD T. CALVO,)
ed, and LUIS P. UNTALAN, as)
ary administrator of the)
of ISMAEL T. CALVO, deceased,)
CENTA T. CALVO,)

Appellants)

APPELLANTS' REPLY
BRIEF

vs.)

. CALVO, PAUL M. CALVO as)
strator of the Estate of)
T. CALVO, deceased,)
M. CALVO, THOMAS J. M. CALVO,)
A M. CALVO and RICARDO T. CALVO,)

Appellees)

FILED

Appeal from Order Civil Case No. 112-65

JAN 30 1967

District Court of Guam

Territory of Guam

WM. B. LUCK, CLERK

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FEB 15 1967

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Appellants)

vs.)

M. CALVO, PAUL M. CALVO as)
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 RD M. CALVO, THOMAS J. M. CALVO,)
 NICA M. CALVO and RICARDO T. CALVO,)

Appellees)

ARGUMENT

The only question raised by appellees in their brief is whether
 ot the order of the District Court of Guam (contained in Pre-
 l Order of April 11, 1966) transferring this action to the
 nd Court of Guam, is appealable (Brief of Appellees, page 2).
propriety of the District Court's action is not argued, except
 some reference is made to misjoinder of parties plaintiff and
 ndant. (Brief of Appellees, pages 3, 12 and 13). Appellees
 do not justify the District Court's action (or claim that
 District Court acted properly) in transferring this action to
 Island Court of Guam. The inference can be drawn, therefore,
if the said order is appealable the District Court acted

properly in making said order and same should be reversed.

The authorities cited by appellees are not in point. These authorities simply state (which appellants concede) that interlocutory orders are not appealable and that as long as the trial court control of the action and has not finally disposed of same, no interim orders are appealable. Appellees have not cited a single case holding that an order such as the one appealed from, is not appealable. They have not questioned Muller vs. Reagh, 150 C.A. 199; 309 P 2d 285, which holds that an order of the Superior Court transferring a cause to the Municipal Court is appealable and have cited no case holding to the contrary.

The order appealed from is final because the District Court of Guam has divested itself of jurisdiction - it no longer has control of the action - it does not have the right to try the action on its merits - it has taken its final action - nothing more remains for it to do. The order is therefore final and appealable.

Appellants' appeal is taken under 28 U.S.C., Section 1291, viz:

"1291. Final Decisions of District Courts. The courts of appeals shall have jurisdiction of appeals from all final decisions of ... the District Court of Guam..."

Order appealed from is final and appealable. (Muller vs. Reagh, 150 C.A. 199).

28 U.S.C., Section 1292 concerns "interlocutory decisions" and is therefore inapplicable.

Rule 54, Federal Rules of Civil Procedure (Appellees' Brief, p. 3) is not in point, as the District Court of Guam divested

lief of jurisdiction to try the action on its merits.

The trial court was not authorized to find a misjoinder of issues and causes of action without submitting these issues for trial. As shown by the pleadings the question of misjoinder was a disputed question of fact and could not be decided by the court without the submission of evidence. Furthermore, misjoinder is ground for dismissal. Rule 21, Federal Rules of Civil Procedure (Appellants' Brief, page 17).

Appellants repeat that the authorities cited by appellees are governed with interlocutory decisions only, which admittedly are not appealable. The order appealed from in this action is final and appealable. The court erred in making said Order.

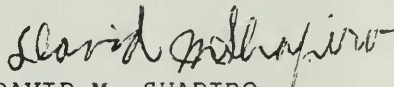
CONCLUSION

For the reasons above stated, it is respectfully submitted that the order appealed from should be reversed.

Dated, Agana, Guam

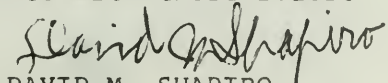
January 24, 1967

Respectfully submitted,


DAVID M. SHAPIRO
Attorney for Appellants

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.


DAVID M. SHAPIRO
Attorney for Appellants

